



HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Mark W. Muschenheim
Phone: 212-356-2186
Email: mmuschen@law.nyc.gov

February 22, 2024

By ECF

Hon. Lewis J. Liman
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: 725 Eatery Corp. v. City of New York, 02 CV 4431 (LJL)
59 Murray Corp. v. City of New York, 02 CV 4432 (LJL)
Club at 60th Street, Inc. v. City of New York, 02 CV 8333 (LJL)
336 LLC v. City of New York, 18 CV 3732 (LJL)

Dear Judge Liman:

This office represents the defendants in these four actions. On behalf of all parties in these four actions, attached is fully executed stipulation that the parties respectfully request Your Honor to so order.

The stipulation requests that the Your Honor direct the Clerk of the Court to promptly enter final judgment resolving these four actions. The stipulation also sets forth, among other items, deadlines by when the plaintiffs must file their notices of appeal and opening appellate briefs; provided that plaintiffs meet these deadlines, the defendants have agreed to stay enforcement of the adult use 2001 Amendments to the New York City Zoning Resolution pending a decision on appeal by the merits panel by the Court of Appeals for the Second Circuit.

Thank you for your consideration.

Respectfully submitted,

A blue ink signature of Mark W. Muschenheim.

Mark W. Muschenheim
Assistant Corporation Counsel

Attachment
cc: Counsel of Record (via ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

689 EATERY CORP., etc., *et al.*, :
Plaintiffs, :
- against - :
Civil Action No.
THE CITY OF NEW YORK, et al., :
Defendants. :
X

59 MURRAY ENTERPRISES INC., etc., *et al.*, :
Plaintiffs, :
- against - :
Civil Action No.
THE CITY OF NEW YORK, et al., :
Defendants. :
X

CLUB AT 60TH STREET, INC., etc., *et al.*, :
Plaintiffs, :
- against - :
Civil Action No.
THE CITY OF NEW YORK, :
Defendant. :
X

336 LLC., etc., *et al.*, :
Plaintiffs, :
- against - :
Civil Action No.
THE CITY OF NEW YORK, *et al.*, :
Defendants. :
X

STIPULATION AND ORDER

WHEREAS, on February 9, 2024 the Honorable Lewis J. Liman, United States District Judge, issued an Opinion and Order in the above-captioned actions finding in favor of Defendants on each of Plaintiffs' claims, the effect of which was stayed for a period of fourteen days for the parties to consider next steps;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties as follows:

1. The parties respectfully request that the Court direct the Clerk of the Court to promptly enter final judgment resolving these actions.

2. No plaintiff shall seek a new trial, move for reconsideration, reargument, amendment, or alteration of the final judgment or any prior order or finding of the Court, or seek any similar relief, whether sought under Federal Rule of Civil Procedure 52, 59, 60, Local Civil Rule 6.3, or any other rule.

3. Plaintiffs shall file any notice of appeal within seven (7) calendar days of entry of the final judgment.

4. Subject to the timely filing of a notice of appeal as provided in this Stipulation, enforcement of Sections 12-10, 32-01, 42-01, 52-77, 72-40, and 72-41 of the Zoning Resolution as to the appealing plaintiff(s) shall to be stayed pending a decision on appeal by a merits panel of the U.S. Court of Appeals for the Second Circuit.

5. Any plaintiff who fails to file a notice of appeal by the deadline described in paragraph 3 shall not be entitled to the stay described in paragraph 4.

6. No plaintiff shall seek a stay pending appeal, a temporary restraining order pending appeal, a preliminary injunction pending appeal, or any similar relief from the U.S. Court of Appeals for the Second Circuit at any point prior to a decision on appeal by a merits panel of the Second Circuit.

7. Plaintiffs shall serve and file their opening brief(s)—a maximum of two—within sixty (60) calendar days from the date the first notice of appeal was filed in this Court, absent a force majeure such as a natural disaster or unforeseeable events of similar magnitude.

8. If any plaintiff fails to file an opening brief by the deadline described in paragraph 7, the stay described in paragraph 4 shall be deemed vacated as to that plaintiff without further order of the Court, and upon defendants' request that plaintiff shall promptly execute a stipulation withdrawing the appeal with prejudice, with each party to bear its own costs and fees.

9. Without waiving the right to file a motion seeking an exemption from all or any portion of the Appendix requirements of Second Circuit Rule 3.1, and unless any such motion is granted, the parties further agree to the filing of a deferred appendix on the appeal pursuant to F.R.App.Pr. 30(c).

Respectfully submitted,

DATED: February 24, 2024

By:



MARK W. MUSCHENHEIM

Assistant Corporation Counsel

HON. SYLVIA O. HINDS-RADIX

Corporation Counsel of the City of New York

Counsel for Defendants in All Actions

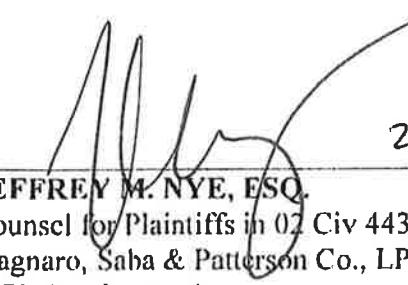
100 Church Street

New York, New York 10007

(212) 356-2186

DATED: February , 2024

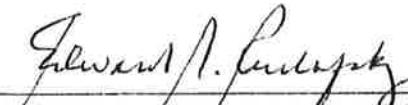
By: _____


JEFFREY M. NYE, ESQ.
Counsel for Plaintiffs in 02 Civ 4431 (LJL.)
Stagnaro, Saba & Patterson Co., LPA
7373 Bechmont Avenue
Cincinnati, Ohio 45230
(513) 533-6714

2/21/24

DATED: February , 2024

By: _____


EDWARD S. RUDOFSKY, ESQ.
Counsel for Plaintiffs in 02 Civ 4432 (LJL.)
Zane and Rudofsky
Five Arrowwood Lane
Melville, New York 11747
(917) 913-9697

2/21/24

DATED: February 21, 2024

By: _____


G. RANDALL GARROU
JEROME H. MOONEY
Counsel for Plaintiffs in 02 Civ 8333 (LJL.)
Weston Garrou & Mooney
12121 Wilshire Blvd. Suite 525
Los Angeles, California 90025
(310) 749-6069

DATED: February 21, 2024

By: _____


ERICA T. DUBNO, ESQ.
Counsel for Plaintiffs in 18 Civ 3732 (LJL.)
Fahringer & Dubno
43 West 43rd St #261
New York, New York 10036
(212) 319-5351

IT IS SO ORDERED.

Date: February 22, 2024
New York, New York



LEWIS J. LIMAN
United States District Judge